

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF LOUISIANA  
LAFAYETTE DIVISION

WILLIAM LABAUVE

CIVIL ACTION NO.: 21-2245

VERSUS

DISTRICT JUDGE

BROOKSHIRE GROCERY  
COMPANY

MAGISTRATE JUDGE

JURY TRIAL DEMANDED

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**NOTICE OF REMOVAL**

NOW COMES, Defendant, Brookshire Grocery Company, through undersigned counsel and pursuant to 28 U.S.C. §§ 1441 and 1446, files this Notice of Removal of the captioned action now pending in the 15<sup>th</sup> Judicial District Court for the Parish of Lafayette, State of Louisiana, Docket No. C-20213554, Section G. In support of its Notice of Removal, Defendant respectfully represents:

**COMMENCEMENT AND NATURE OF ACTION**

1.

On or about July 9, 2021, Plaintiff, William Labauve, initiated a legal action in the 15<sup>th</sup> Judicial District Court for the Parish of Lafayette by filing a Petition for Damages styled “*William Labauve versus Brookshire Grocery Company*,” bearing docket number C-20213554, Section G, which state court is within the jurisdiction of the Western District of Louisiana, Lafayette Division. Brookshire Grocery Company was named as the sole defendant. A copy of Plaintiff’s Petition for Damages is attached hereto as Exhibit A and incorporated herein by reference.

2.

In the Petition, Plaintiff asserted claims based on a slip and fall accident that occurred in Lafayette Parish, Louisiana, on August 26, 2020. Plaintiff alleged that he was walking in a Super

1 Foods store owned by Brookshire Grocery Company when “he slipped and fell on melted ice on the floor near the ice machine.” Plaintiff alleged that he suffered personal injuries as a result of the accident. Nothing in the Petition indicated that the amount in controversy was in excess (or was not in excess) of \$75,000.

3.

Brookshire Grocery Company was served with the Citation and Petition for Damages via CT Corporation System on July 19, 2021. *See* Exhibit B. Accordingly, this Notice of Removal is timely.

4.

Prior to the filing of suit, the plaintiff’s counsel issued a settlement offer in excess of \$75,000, exclusive of interest and costs, which indicates the amount in controversy is sufficient pursuant to 28 U.S.C. § 1332(a).

#### PARTIES AND DIVERSITY OF CITIZENSHIP

5.

According to the allegations of the Petition, plaintiff, William Labauve is domiciled in Iberia Parish, Louisiana. Furthermore, based upon information and belief and the evidence available to Defendant to date, William Labauve was a domiciliary of Louisiana at the time his Petition was filed in the 15<sup>th</sup> Judicial District Court for the Parish of Lafayette, Louisiana, on July 9, 2021.

6.

Brookshire Grocery Company is incorporated in the State of Texas with its principal place of business in Tyler, Texas. Accordingly, defendant Brookshire Grocery Company is a domiciliary of the State of Texas. *See* Exhibit C, Affidavit of Verification.

7.

Complete diversity of citizenship exists between Plaintiff, William Labauve, and Defendant, Brookshire Grocery Company, as is required for original jurisdiction to vest in the United States District Court for the Western District of Louisiana, pursuant to 28 U.S.C. § 1332.

AMOUNT IN CONTROVERSY

8.

Removal of an action from state to federal court on the basis of diversity is proper if the district court finds, by a preponderance of the evidence, that the amount in controversy exceeds \$75,000.

9.

Louisiana prohibits by statute pleading specific monetary amounts of damages in the context of most civil actions. In paragraph 16 of the Petition, Plaintiff alleges that he suffered bodily injuries including “[t]ear of lateral and medial meniscus of right knee requiring surgery” and “[s]train of right quadricep muscle.” In Paragraph 20 of the Petition, Plaintiff alleges that his damages also include physical pain and suffering (past, present, and future), mental anguish (past, present, and future), loss of enjoyment of life (past, present and future), disfigurement and disability, medical expenses (past, present, and future), and “other elements of damages developed during discovery and/or demonstrated with particularity at the trial of this matter.” Defendant denies plaintiff’s allegations or that plaintiff is entitled to damages in any amount. However, Louisiana courts have found general damages awards for similar knee injuries and treatment in excess of \$75,000. *See Virginia Hanner vs. Safeco Insurance Company of Oregon, et al.*, Civil Action No. 10-41146, Section “C,” 18<sup>th</sup> Judicial District Court, Parish of West Baton Rouge, State of Louisiana, April 27, 2016 Judgment (Batiste, J., presiding).

10.

Moreover, prior to filing suit, Plaintiff's counsel sent a settlement demand well in excess of \$75,000. In the demand, the plaintiff's counsel represented incurred medical specials exceeding \$18,000 with additional bills not yet received. In the same correspondence, plaintiff's counsel identified that plaintiff underwent arthroscopy of his right knee with a meniscectomy. Following this surgery, plaintiff proceeded with physical therapy and was continuing to treat as of the correspondence dated January 25, 2021. The January 25, 2021, correspondence from plaintiff's counsel contained settlement negotiations and included medical records of the plaintiff. These documents are not attached as exhibits due to confidentiality, and copies can be provided to the Court upon request for *in camera* review. Although defendant denies plaintiff's allegations and claims, "the settlement letter is valuable evidence to indicate the amount in controversy at the time of removal." *Fairchild v. State Farm Mut. Auto. Ins. Co.*, 907 F. Supp. 969, 971 (M.D. La. 1995).

#### REMOVAL PROCEDURES

11.

Because complete diversity exists between the parties herein, and because the amount in controversy exceeds the jurisdictional amount required by 28 U.S.C. § 1332, the United States District Court for the Western District of Louisiana is vested with original jurisdiction over this action pursuant to 28 U.S.C. § 1442, *et seq.*

12.

Pursuant to 28 U.S.C. § 1441 and Local Rule 77.3, removal is proper to the United States District Court for the Western District of Louisiana, Lafayette Division as the district court of the United States for the district and division embracing the place where this action is pending: the 15<sup>th</sup> Judicial District Court for the Parish of Lafayette, State of Louisiana.

13.

Brookshire Grocery Company is the sole defendant named in this matter. Accordingly, there is no requirement to obtain the consent of any other defendants to removal.

14.

This Notice of Removal is filed within thirty days of the date of service of the Citation and Petition for Damages. *See* 28 U.S.C. § 1446(b)(3) and (c)(3)(A).

15.

A copy of this Notice of Removal is being served upon all counsel of record, and Defendant will file a copy of this Notice with the Clerk of Court for the 15<sup>th</sup> Judicial District for the Parish of Lafayette, State of Louisiana. A copy of the State Court Written Notice of Removal is attached hereto and made a part hereof as Exhibit D.

16.

A copy of the entire state court record is being requested and will be filed with this Court pursuant to 28 U.S.C. §1447(b).

17.

Defendant is entitled to and requests a trial by jury on all issues.

WHEREFORE, notice is hereby given that this action is removed from the 15<sup>th</sup> Judicial District Court for the Parish of Lafayette to the United States District Court for the Western District of Louisiana, Lafayette Division.

Dated this 29<sup>th</sup> day of July, 2021.

Respectfully submitted,

**FAIRCLOTH MELTON SOBEL & BASH, LLC**

By: /s/ Laura Beth Matthews

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**ATTORNEYS FOR DEFENDANT,  
BROOKSHIRE GROCERY COMPANY**

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF LOUISIANA  
LAFAYETTE DIVISION**

**WILLIAM LABAUVE**

**CIVIL ACTION NO.: 21-2245**

**VERSUS**

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**MAGISTRATE JUDGE**

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\*\*\*\*\*

**CERTIFICATION OF COMPLIANCE WITH 28 U.S.C. § 1446(d)**

I hereby certify that a copy of the foregoing Notice of Removal has been placed in the United States Mail, with proper and sufficient postage affixed, addressed to:

William Labauve  
Through his attorneys of record:  
Matthew R. Reed  
Gordan McKernan Injury Attorneys  
2505 Verot School Road  
Lafayette, LA 70508

I hereby further certify that a copy of the foregoing Notice of Removal has also been placed in the United States Mail, with proper and sufficient postage affixed, addressed to:

Clerk of Court  
Parish of Lafayette  
15<sup>th</sup> Judicial District  
P.O. Box 2009  
Lafayette, LA 70502

for filing in the record in the state court action entitled: “*William Labauve vs. Brookshire Grocery Company*,” bearing docket number C-20213554, Section G, on the docket of the 15<sup>th</sup> Judicial District Court for the Parish of Lafayette, State of Louisiana.

Dated this 29<sup>th</sup> day of July, 2021.

Respectfully submitted,

**FAIRCLOTH MELTON SOBEL & BASH, LLC**

By: /s/ Laura Beth Matthews

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